IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9094 OF 2007

Nikhil Milk Processors ..Petitioner

Vs.

Republican Kamgar Union and ors. ..Respondents

Mr. P.K. Rele, Senior Advocate with Mr.P.N. Anaokar and Mr. Rahul Oak for petitioner.
Mr. Rajesh Gehani for respondents.

CORAM: B.H. MARLAPALLE, J.

Date : December 12, 2007.

P.C.:

1. Heard Mr. Rele the learned Senior Counsel with Mr. Anaokar for the petitioner and Mr. Rajesh Gehani the learned counsel for the respondents.

2. The petitioner - Partnership Firm is aggrieved by the interlocutory order passed by the learned Member of the Industrial Court at Thane below Exh.U-2 in Complaint (ULP) No. 233 of 2007 on 12/10/2007 and confirmed in the Review Application which came to be rejected on 28/11/2007. By the impugned order dated 12/10/2007 the learned Member has directed the present

petitioner to allow the workers to report for duty and to pay their wages, in addition to the wages to be paid for the month of July and August, 2007.

3. As per the petitioner it approached the Industrial Court by filing Complaint (ULP) No. 198 of 2007 and sought injunction against the respondent - Union and its members. It claimed that by an agreement dated 29/5/2007 it had purchased the plant and machinery of M/s. Simla Dudh Pvt. Ltd. and by a Deed of Confirmation registered in April, 2007 it had purchased the land appurtenant to the said factory and admeasuring about 8000 sq.mtrs. It was further stated that till 19/10/2006 M/s. Simla Dudh Pvt. Ltd. were running their factory and processing and packing of milk and subsequently the plant and machinery was taken over by the State Bank of India which had issued a notice for public auction on 3/1/2007 and the date of auction was fixed as 19/2/2007. One of the petitioners partner Shri Dhananjay Gawade was, by resolution dated 12/3/2007, taken on the Board of M/s. Simla Dudh Pvt. Ltd. and subsequently within a short time he resigned and decided to form a Partnership

Firm with his friends Mrs. Chhaya Patil, Mrs. Jaishree Kadam, Mrs. Rajeshri Shelke, Mrs. Gitanjali Gawde, Mr. Santosh Temwalkar, Mr. Mahendra Ghag, Mr. Mahesh Kadam, Mrs. Varsha Satpute, Mrs. Ratan Satpute and Mr. Shailesh Joshi and others and Partnership Deed was signed and registered on 19/6/2007. On 6/7/2007 the total amount of purchase was remitted and on 8/7/2007 the premises were cleaned and sealed. By subsequent letter dated 22/7/2007, the property was handed over to the present petitioner and the employees engaged by M/s.Simla Dudh Pvt. Ltd. started indulging in the acts of unfair labour practice on 2/8/2007 onwards and, therefore, said complaint was filed.

4. The respondent - Union also filed Complaint (ULP) No. 233 of 2007 alleging unfair labour practices against the present petitioner and its partners. The said complaint was filed under Section 28 read with Item 6 of Schedule II and Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (for short the Act) alleging that from 9/8/2007

onwards the respondents therein had commenced unfair labour practices. In the said complaint an application for interim relief under Section 30(2) of the Act was filed below Exh.U-2 and by the impugned order the said application has been allowed. Whereas the prayer for injunction made in the complaint filed by the petitioner i.e. Complaint (ULP) No. 198 of 2007 has been rejected.

5. Mr.Rele the learned Senior Counsel pointed out that on 19/10/2006 M/s. Simla Dudh Pvt. Ltd. had closed the undertaking by displaying closure notice and there was no liability whatsoever that was taken over by the present petitioner in respect of the employees as the petitioner-firm had purchased the plant and machinery and the land and had thus become a owner of the entire property. As per the petitioner the factory of M/s. Simla Dudh Pvt.Ltd. was closed down after the closure notice and none of the employees working prior to 19/10/2006 were retained on the rolls of the transferor company and at the same time none of them were working after 19/10/2006 in the said premises as the factory was closed and their

services were terminated. Mr.Rele, therefore, submitted that on these obtaining circumstances, there could be no unfair labour practice, prima facie, against the present petitioner-firm and the impugned order is grossly erroneous. It is also submitted that there is no employer-employee relationship between the petitioner and the members of the complainant-Union and unless this issue is decided by leading evidence before the Industrial Court, the application under Section 30(2) of the Act could not be entertained. Once the petitioner had taken over the Unit after it was closed down by M/s. Simla Dudh Pvt.Ltd., it had no liability towards the employees of the transferor company and in support of these contentions Mr.Rele relied upon the Constitution Bench judgment in the case of Anakapalla Co-operative Agricultural and Industrial Society vs. Its Workmen **[1962 II LLJ 621]**.

6. The learned counsel for the respondent-Union, on the other hand, has supported the impugned order and submitted that there was sufficient material on record to support the prima facie findings of the Industrial Court recorded in the impugned order. He

submitted that there was no closure of the factory by M/s.Simla Dudh Pvt. Ltd. as claimed by the notice dated 19/10/2006, workmen of the said transferor company continued to work till August, 2007 without any interruption in their service and when the Investigating Officer visited the premises of M/s.Simla Dudh Pvt. Ltd. on 29/11/2006 it was noticed that the Unit was being run by M/s. Karnick and Associates and the staff of M/s.Simla Dudh Pvt. Ltd. was taken over on the rolls of M/s. Karnick and Associates. He has pointed out that the workmen had filed Complaint (ULP) No. 310 of 2006 and also sought interim orders. The Industrial Court by its order dated 8/12/2006 had directed M/s. Simla Dudh Pvt.Ltd. not to terminate the services of the workers and not to remove the machinery and consequently the workers continued to perform their duties even when the respondent - Union filed Complaint (ULP) No. 233 of 2007. He further submitted that the alleged closure is an eyewash, including the purported transfer of the undertaking to the present partnership firm and all these issues will have to be decided by leading evidence before the Industrial Court in the pending complaints i.e. Complaint (ULP) Nos.198 of 2007 and

233 of 2007. In the meanwhile, the Industrial Court has only continued the status quo and directed payment of wages after satisfying itself that the workers were on duty even till August, 2007.

7. In the impugned order the learned Member noted the order passed on 8/12/2006 in Complaint (ULP) No. 310 of 2006 directing the transferor company not to terminate the services of the workmen and not to remove the machinery. He also referred to the report of the Investigating Officer submitted on 7/12/2006 and noted that even though the transferor company claimed to have closed the Unit, as on 29/11/2006 the milk processing work was going on in the factory premises under the supervision of M/s. Karnick and Associates who had also taken over the liability of the staff. He also noted that the closure as such could not be accepted merely on the basis of the notice dated 19/10/2006 and, therefore, he issued the directions by the impugned order as stated hereinabove. When Complaint (ULP) No. 310 of 2006 came to be filed, the complainant-workmen placed on record two different lists of the workmen employed in

the factory by M/s.Simla Dudh Pvt.Ltd. The first list consists of 59 names whereas the second list consists of 69 names. This complaint was filed on 18/11/2006. The first list states that there were 41 permanent workers and the remaining 18 were working anywhere from 2 to 5 years. The second list is an authorisation claimed to have been given by 69 workmen to file the complaint on behalf of the workmen by the co-workmen, namely, Homkant Narayan Jawale and Manik Kashinath Gupta. The contention of the petitioner that it has taken over the entire establishment by way of a sale transaction and the predecessor in title i.e. M/s. Simla Dudh Pvt.Ltd. had closed down the factory and retrenched / terminated the services of its employees is an issue which is required to be decided on the basis of the evidence that the parties may lead before the Industrial Court. If regards be had to the law laid down by the Constitution Bench in Anakapalla Co-operative Agricultural and Industrial Soceity's case (Supra), the sale transaction can be genuine or it can be fictitious / benami and, therefore, the factum of transfer of the earlier undertaking in favour of the petitioner - firm will have to be decided on the basis of the oral and

documentary evidence that the parties may adduce. When a running establishment is closed, the services of the workmen are either retrenched / terminated and their legal dues are paid as per Section 25F of the Industrial Disputes Act, 1947 (for short the I.D. Act.). Section 25FF provides for compensation to workmen in case of transfer of undertaking and states that where the ownership of management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to or that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25F, as if the workmen had been retrenched. Section 25FFF provides for compensation to workmen in case of closing down of undertaking and states that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub section (2), be entitled to notice and compensation in accordance with the provisions of

Section 25F, as if the workman had been retrenched. The scheme of Sections 25F, 25FF and 25FFF of the I.D. Act was examined by the Constitution Bench in Anakapalla Co-operative Agricultural and Industrial Society's case (Supra) and Their Lordships held that once the workmen were paid compensation in case of transfer of undertaking or in case of closing down an undertaking, they could not claim employment in the transferee undertaking and the provisions of Section 25H of the I.D. Act could not be invoked. It is thus clear whether the provisions of Section 25FF or Section 25FFF shall be applicable to the instant case is a matter which will have to be decided by the Industrial Court on the basis of the evidence that the parties may adduce and then it would be necessary for the transferor company to prove that the liability either under Section 25FF or 25FFF was discharged prior to the transfer of undertaking to the present petitioner-firm.

8. For the prima facie considerations the Investigating Officer's report dated 7/12/2006 indicated that on 29/11/2006 the establishment was

being run by M/s. Karnick and Associates and the workmen were on duty. The Industrial Court in the complaint filed by the individual workmen had protected the services of the workmen and the transfer of undertaking by M/s. Simla Dudh Pvt. Ltd. to the present petitioner is required to be proved by leading evidence along with the issue of the factum of closure by complying the requirements of either Section 25FF or Section 25FFF of the I.D. Act. I am, therefore, satisfied that the learned Member of the Industrial Court was justified in issuing the impugned interim directions and the said order cannot be termed as perverse or patently erroneous so as to call for interference under Article 227 of the Constitution.

9. Hence, the petition is rejected summarily.

10. It is directed that all the three complaints i.e. Complaint (ULP) Nos.310/06, 198/07 and 233/07 shall be clubbed and tried together. The complaints be decided as expeditiously as possible and preferably within a period of six months from the receipt of writ

from this court. Parties to co-operate with the Industrial Court for disposal of the complaints within the stipulated period. It is also made clear that the complaints will have to be decided on their own merits and without being influenced by any observations made in the interlocutory orders or in this order. Liberty to apply for impleading M/s. Simla Dudh Pvt. Ltd. and M/s. Karnik Associates as the added respondents in Complaint (ULP) No.233 of 2007.

11. Mr. Rele the learned Senior Counsel at this stage made an oral application for stay to this order. The application is rejected.

(B.H. Marlapalle,J.)